
7900 INTRASTATE APPORTIONMENT

Even though unitary business income is geographically apportioned on the basis of a combined report, each taxpayer member of a combined group is subject to its own tax liability. The minimum franchise tax and alternative minimum tax are applied on an individual entity basis, as are net operating losses and most tax credits. A taxpayer's nonbusiness income or losses may only be offset against the California business income apportioned to that taxpayer. When separate Notices of Proposed Assessment are issued, each Notice must reflect only the tax deficiency for that particular taxpayer.

Since unitary business income is combined and apportioned on a group basis, it is necessary to further apportion the California income among the taxpayer members of the group. This process is referred to as *intrastate apportionment*. (If any member of the unitary group has sales assigned to the numerator of the sales factor, but is not itself taxable in this state under the immunity of P.L. 86-272, it is also necessary to calculate the relative California factors of the taxpayer members. This computation is described in MATM 7905.)

Effective for cases closed after June 30, 1996, intrastate apportionment schedules showing the separate tax liabilities for all taxpayers in the combined report will generally be required. Exceptions will only be permitted in those cases where the data necessary to compute intrastate apportionment is not readily available, it is unlikely that there will be a future need for determination of separate tax liabilities, and the taxpayer has not requested separately stated tax liabilities. The reasons for not preparing intrastate apportionment computations should be explained in the audit narrative, and the NPA should include a statement indicating that separate tax liabilities will be provided upon request.

The following examples illustrate situations where not preparing intrastate apportionment schedules may be justified:

A single notice applies to more than 10 California taxpayers. There are no NOL carryovers, AMT, tax credits or nonbusiness items. None of the taxpayers have been disaffiliated, and none are suspended or pending bankruptcy. The income levels of the taxpayers makes it unlikely that they will ever be subject to the additional 2% interest on unpaid tax. Separate computations would require substantial audit time. The taxpayers did not report intrastated tax liabilities on their Schedule R-7, and do not now request the computation.

Desk audit activity results in statutory adjustments, and there has been no contact with the taxpayer. There are no NOL carryovers, AMT, tax credits or nonbusiness items. Information available to the auditor does not indicate that any of the taxpayers have been disaffiliated, and none are suspended or pending bankruptcy. The income levels of the taxpayers make it unlikely that they will ever be subject to the additional 2% interest on unpaid tax. This fact pattern may commonly arise with respect to RAR adjustments.

On many group returns, the self-assessed tax liabilities of each of the taxpayer members are not identified on the Schedule R-7. In order to calculate the additional tax or refund on an intrastate apportioned basis, the auditor will have to:

Intrastate apportion revised net income based upon apportionment data per the audit, and also Intrastate apportion the total previously assessed tax paid by the key corporation based upon the combined report income and apportionment data from the original return as filed.

If the information necessary to intrastate apportion the self-assessed tax is not disclosed in the tax return itself, then the auditor should attempt to reconstruct the intrastate apportionment using the best available information supplied by the taxpayer or obtained during the audit. If the data needed to intrastate apportion the previously assessed tax cannot otherwise be developed, then the previously assessed tax should be credited in a manner, which is reasonable under the circumstances. These procedures are explained in [FTB Legal Ruling 95-2](#). The methodology of [FTB Legal Ruling 95-2](#) was approved by the SBE in the *Appeal of First Pacific Bancorp*, Cal. St. Bd. of Equal., November 9, 1995.

Computation of intrastate apportionment:

The intrastate apportionment computations are explained in [FTB Legal Ruling 234](#) and modified by [FTB Notice 1990-3](#). Basically, combined California business income is divided among corporations having activities in this state in accordance with the ratio that the California factors of each corporation bears to the total factors of the group. If any member of the combined report group has California property, payroll or sales, but is not itself taxable within the state, then the intrastate apportionment computation described in MATM 7905 must be used. However, if all members with California property, payroll and sales are California taxpayers, the following intrastate apportionment computation may be used as a shortcut:

Example: Corporations A, B and C are members of a unitary group. None of the corporations has any nonbusiness income. Assume the following facts:

	(a) Corp A	(b) Corp B	(c) Corp C	(d) Combined
Separate income:	100,000	300,000	600,000	1,000,000
Everywhere: <i>property</i>	500,000	64,000	36,000	600,000
<i>payroll</i>	300,000	74,000	26,000	400,000
<i>sales</i>	4,000,000	600,000	400,000	5,000,000
California: <i>property</i>	24,000	36,000	60,000	

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<i>payroll</i>	14,000	26,000	40,000
<i>sales</i>	150,000	450,000	400,000

For each taxpayer, divide California property, payroll and sales (columns (a) thru (c)) by combined property, payroll and sales (column (d)):

Property	4%	6%	10%	20%
Payroll	3.5%	6.5%	10%	20%
Sales	3%	9%	8%	
Double-weighted sales	6%	18%	16%	40%
Total property, payroll & double weighted sales	13.5%	30.5%	36%	80%

Average Intrastate

Apportionment % (divide 3.375% by 4)	7.625%	9%	20%
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Apply each taxpayer's average intrastate apportionment percentage to the combined unitary business income of \$1,000,000:

33,750	76,250	90,000	200,000
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This represents the income that has been intrastate apportioned to each of the taxpayers.

The PASS audit schedules will perform these calculations.

Reviewed: September 2003

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7905 INTRASTATE APPORTIONMENT AFTER FTB NOTICE 1990-3

(THE FINNIGAN COMPUTATION)

As discussed in MATM 7530, sales shipped to a California destination from another state may not be thrown back to the state of origin if any member of the combined report is taxable in California. All such sales must be included in the numerator of the California sales factor. The same principle will apply to California property and payroll belonging to an entity that is immune from California tax under P.L. 86-272. For example, an entity may have California payroll attributable to salesperson salaries, but if the activities of the salespeople do not exceed solicitation of orders for sales, then the entity would not be taxable in California (see MATM 1200 - MATM 1240). If any member of the combined report is taxable in this state however, then any property and payroll must be included in the California numerators of the apportionment formula.

Since one or more members of the group may have California property, payroll or sales, but may not themselves be taxable within this state, the intrastate apportionment computation originally devised in [FTB Legal Ruling 234](#) was refined so that no income would be apportioned to the nontaxable entities. The computations that have been developed to deal with this situation are described in [FTB Notice 1990-3](#). Following is an example of the computation:

Example

Corporations A, B and C are members of a unitary group. None of the corporations has any nonbusiness income. Assume the following facts:

	(a) Corp A	(b) Corp B	(c) Corp C	(d) Combined
Business income:				1,000,000
Everywhere:				
property				600,000
payroll				400,000
sales				5,000,000
California:				
property	24,000		36,000	60,000
payroll	14,000		26,000	40,000
sales	150,000	450,000	400,000	1,000,000

For each taxpayer, divide California property, payroll and sales (columns (a) thru (c)) by combined property, payroll and sales (column (d)):

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Property	4%	0%	6%	10%
Payroll	3.5%	0%	6.5%	10%
Sales	3%	9%	8%	
Double-weighted sales	6%	18%	16%	40%
Total property, payroll & double weighted sales				60%
Average (divide by 4)				15%

Income Apportioned to California (1,000,000 x 15%) 150,000

To compute the relative percentages, only corporations, which are taxable in California, are considered.

			<u>Total</u>
Property Factor %	4%	6%	10%
Payroll Factor %	3.5%	6.5%	10%
Sales Factor % (double weighted)	6%	16%	22%
Total	13.5%	28.5%	42%
Average	3.375%	7.125%	10.5%

Divide each taxpayer's average percent (columns (a) and (c)) by the combined average (column (d)).

Relative Percent	32.1429%	67.8571%	100%
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Apply each taxpayer's relative percent to the income apportioned to California of \$150,000:

48,214	0	101,786	150,000
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